

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

STILKENBÖHMER, Uwe
Postfach 10 60
28060 Bremen
GERMANY

EISENFÜHR, SPEISER & PARTNER
EINGEGANGEN/RECEIVED

16. Sep. 2005
FRIST: 31.07.06
BREMEN
PCT
FRIST 26.09.06

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
THE WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Date of mailing
(day/month/year)

15/09/2005

Applicant's or agent's file reference

SA 5620-02WO

FOR FURTHER ACTION

See paragraphs 1 and 4 below

International application No.

PCT/EP2005/050909

International filing date
(day/month/year)

02/03/2005

Applicant

SYMRISE GMBH & CO. KG

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

Filing of amendments and statement under Article 19:

The applicant is entitled, if he so wishes, to amend the claims of the International Application (see Rule 46):

When? The time limit for filing such amendments is normally 2 months from the date of transmittal of the International Search Report; however, for more details, see the notes on the accompanying sheet.

Where? Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 740.14.35

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.

3. ☐ **With regard to the protest** against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of **18 months** from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90*bis*.1 and 90*bis*.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within **19 months** from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until **30 months** from the priority date (in some Offices even later); otherwise, the applicant must, **within 20 months** from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of **30 months** (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the International Searching Authority



European Patent Office, P.B. 5818 Patentlaan 2
NL-2280 HV Rijswijk
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,
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Authorized officer

Eva Boháčová

PATENT COOPERATION TREATY

PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference SA 5620-02WO	FOR FURTHER ACTION <small>see Form PCT/ISA/220 as well as, where applicable, item 5 below.</small>	
International application No. PCT/EP2005/050909	International filing date (day/month/year) 02/03/2005	(Earliest) Priority Date (day/month/year) 31/03/2004
Applicant SYMRISE GMBH & CO. KG		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 6 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the report

a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ The international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. ☐ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, see Box No. I.

2. ☐ **Certain claims were found unsearchable** (See Box II).

3. ☐ **Unity of invention is lacking** (see Box III).

4. With regard to the **title**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the **drawings**,

a. the figure of the **drawings** to be published with the abstract is Figure No. _____

☐ as suggested by the applicant.

☐ as selected by this Authority, because the applicant failed to suggest a figure.

☐ as selected by this Authority, because this figure better characterizes the invention.

b. ☐ none of the figures is to be published with the abstract.

INTERNATIONAL SEARCH REPORT

International Application No
PCT/EP2005/050909

A. CLASSIFICATION OF SUBJECT MATTER IPC 7 A23F5/40 A23F5/44 C12G3/00		
According to International Patent Classification (IPC) or to both national classification and IPC		
B. FIELDS SEARCHED Minimum documentation searched (classification system followed by classification symbols) IPC 7 A23F C12G		
Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched		
Electronic data base consulted during the international search (name of data base and, where practical, search terms used) EPO-Internal, WPI Data, PAJ, FSTA, BIOSIS		
C. DOCUMENTS CONSIDERED TO BE RELEVANT		
Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	NL 7 113 466 A (CAPRILES J.G.) 3 April 1973 (1973-04-03) page 1, line 13 - page 3, line 29 examples II,VII,VIII -----	1-5,8-10
X	DATABASE WPI Section Ch, Week 199240 Derwent Publications Ltd., London, GB; Class D13, AN 1992-329154 XP002291031 & KR 9 103 675 B (KOREA GINSENG & TABACCO RES INST) 8 June 1991 (1991-06-08) abstract ----- -/--	1-3,5,8, 9
<input checked="" type="checkbox"/> Further documents are listed in the continuation of box C. <input checked="" type="checkbox"/> Patent family members are listed in annex.		
* Special categories of cited documents : *A* document defining the general state of the art which is not considered to be of particular relevance *E* earlier document but published on or after the international filing date *L* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified) *O* document referring to an oral disclosure, use, exhibition or other means *P* document published prior to the international filing date but later than the priority date claimed *T* later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention *X* document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone *Y* document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art. *&* document member of the same patent family		
Date of the actual completion of the international search 24 June 2005		Date of mailing of the international search report 15. 09. 2005
Name and mailing address of the ISA European Patent Office, P.B. 5818 Patentlaan 2 NL - 2280 HV Rijswijk Tel. (+31-70) 340-2040, Tx. 31 651 epo nl, Fax: (+31-70) 340-3016		Authorized officer Popa, M

Form PCT/ISA/210 (second sheet) (January 2004)

page 1 of 2

C.(Continuation) DOCUMENTS CONSIDERED TO BE RELEVANT		
Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
Y	DATABASE WPI Section Ch, Week 198602 Derwent Publications Ltd., London, GB; Class D13, AN 1986-011914 XP002290513 & JP 60 237942 A (SUNTORY LTD) 26 November 1985 (1985-11-26)	1,8,9
X	abstract	11
Y	US 4 454 165 A (MIZUTANI TERUMASA ET AL) 12 June 1984 (1984-06-12) cited in the application examples	1,8,9
Y	EP 0 885 566 A (NESTLE SA) 23 December 1998 (1998-12-23) cited in the application page 2, line 7 - page 3, line 56	1,8,9
A	GB 2 084 185 A (INVER HOUSE DISTILLERS LTD) 7 April 1982 (1982-04-07) page 1, line 12 - line 54	

INTERNATIONAL SEARCH REPORT

International application No.
PCT/EP2005/050909

Box II Observations where certain claims were found unsearchable (Continuation of item 2 of first sheet)

This International Search Report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☐ Claims Nos.:
because they relate to subject matter not required to be searched by this Authority, namely:
2. ☐ Claims Nos.:
because they relate to parts of the International Application that do not comply with the prescribed requirements to such an extent that no meaningful International Search can be carried out, specifically:
3. ☐ Claims Nos.:
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

Box III Observations where unity of invention is lacking (Continuation of item 3 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

see additional sheet

1. ☐ As all required additional search fees were timely paid by the applicant, this International Search Report covers all searchable claims.
2. ☐ As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this International Search Report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☒ No required additional search fees were timely paid by the applicant. Consequently, this International Search Report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:
1-5, 8 (partially), 9 (partially), 10 (partially), 11

Remark on Protest

- ☐ The additional search fees were accompanied by the applicant's protest.
☐ No protest accompanied the payment of additional search fees.

FURTHER INFORMATION CONTINUED FROM PCT/ISA/ 210

This International Searching Authority found multiple (groups of) inventions in this international application, as follows:

1. claims: 1-5, 8 (partially), 9 (partially), 10 (partially), 11

Water-soluble beverage powder and the associated process

2. claims: 6, 7, 8 (partially), 9 (partially), 10 (partially)

Food products and their associated process

INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/EP2005/050909

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
NL 7113466	A	03-04-1973	NONE	
KR 9103675	B	08-06-1991	KR 9103675 B1	08-06-1991
JP 60237942	A	26-11-1985	NONE	
US 4454165	A	12-06-1984	JP 1352124 C JP 58094387 A JP 59037074 B AU 548475 B2 AU 8186982 A CA 1174991 A1 CH 652742 A5 DE 3214321 A1 DK 131882 A ,B, ES 8308922 A1 FR 2517325 A1 GB 2110235 A ,B IT 1147845 B KR 8901376 B1 MX 157524 A NL 8201373 A NZ 200095 A SE 455042 B SE 8202410 A	11-12-1986 04-06-1983 07-09-1984 12-12-1985 02-06-1983 25-09-1984 29-11-1985 01-06-1983 28-05-1983 16-12-1983 03-06-1983 15-06-1983 26-11-1986 02-05-1989 29-11-1988 16-06-1983 13-09-1985 20-06-1988 28-05-1983
EP 0885566	A	23-12-1998	EP 0885566 A1 AT 224144 T AU 733541 B2 AU 7194098 A BR 9802018 A CA 2234043 A1 CN 1203749 A ,C DE 69807992 D1 DE 69807992 T2 DK 885566 T3 ES 2182215 T3 HU 9801381 A2 ID 20446 A JP 11056233 A MA 24567 A1 NO 982682 A NZ 330417 A PL 326859 A1 PT 885566 T RU 2201092 C2 TW 391862 B ZA 9805330 A	23-12-1998 15-10-2002 17-05-2001 24-12-1998 20-07-1999 19-12-1998 06-01-1999 24-10-2002 28-05-2003 04-11-2002 01-03-2003 01-02-1999 24-12-1998 02-03-1999 31-12-1998 21-12-1998 29-07-1999 21-12-1998 28-02-2003 27-03-2003 01-06-2000 20-12-1999
GB 2084185	A	07-04-1982	NONE	

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2005/050909

International filing date (day/month/year)
02.03.2005

Priority date (day/month/year)
31.03.2004

International Patent Classification (IPC) or both national classification and IPC
A23F5/40, A23F5/44, C12G3/00

Applicant
SYMRISE GMBH & CO. KG

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
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Authorized Officer

Popa, M

Telephone No. +49 89 2399-7829



Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 6-7

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 6-7
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☐ See separate sheet for further details

Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has:
- ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ not paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-5,8(part),9(part),10(part),11

Box No. V Reasoned statement under Rule 43b/s.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	8(part)
	No: Claims	1-5,9(part),10(part),11
Inventive step (IS)	Yes: Claims	-
	No: Claims	1-5,8(part),9(part),10(part),11
Industrial applicability (IA)	Yes: Claims	1-5,8-11
	No: Claims	-

2. Citations and explanations

see separate sheet

Re Item III.

The independent claim **6** and **7** were excluded from the analysis in this opinion as they were not searched. More details in section **Re Item IV.** below.

Re Item IV.

The separate groups of inventions are:

Claims 1-5, 8 (partially), 9 (partially), 10 (partially), 11
Water-soluble beverage powder and the associated process
Claims 6, 7, 8 (partially), 9 (partially), 10 (partially)
Food products and their associated process

They are not so linked as to form a single general inventive concept (Rule 13.1 PCT) for the following reasons:

The common concept linking together the independent claims is: a food product comprising a coffee component, alcohol and a sweetener. This common concept is not novel, see document NL71 13466, examples II, VII and VIII.

Hence the Examining Division considers that said separate inventions or groups of inventions are not so linked as to form a single general inventive concept.

Therefore, the application lacks unity within the meaning of Rule 40 PCT.

Note: The independent claims **6** and **7** appear to be unitarian. However, the requirements of Rule 6.1(a) PCT are not met.

Re Item V.

1 Reference is made to the following documents:

- D1: NL 7 113 466 A (CAPRILES J.G.) 3 April 1973
D2: DATABASE WPI Section Ch, Week 199240 Derwent Publications Ltd., London, GB; Class D13, AN 1992-329154, XP002291031 & KR 9 103 675 B (KOREA GINSENG & TABACCO RES INST) 8 June 1991
D3: DATABASE WPI Section Ch, Week 198602 Derwent Publications Ltd., London, GB; Class D13, AN 1986-011914, XP002290513 & JP 60 237942 A (SUNTORY LTD) 26 November 1985
D4: US 4 454 165 A (MIZUTANI TERUMASA ET AL) 12 June 1984
D5: EP 0 885 566 A (NESTLE SA) 23 December 1998

2 INDEPENDENT CLAIMS 1 AND 9

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

Document **D2** discloses in its abstract that a powdered beverage to be reconstituted with water comprises a coffee component, a creamer and a sweetening agent. From its process of obtention, it is implicit that the alcohol (20% wt. alcohol 70% which is between 5 and 40%) is entrapped in the minute particles of the powdered beverage.

The subject-matter of claim 1 is therefore not new.

- 2.2 In the same time, the subject-matter of the independent claim 9 is equally rendered not new.

3 INDEPENDENT CLAIM 11

- 3.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 11 is not new in the sense of Article 33(2) PCT.

Document **D3** discloses in its abstract that a powdered liqueur obtained by co-spray drying an alcoholic beverage and dextrin may be used for producing a ready-to-drink

coffee flavoured beverage.

The subject-matter of claim 11 is therefore not new.

- 4 The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claim 8 does not involve an inventive step in the sense of Article 33(3)PCT.
 - 4.1 Document **D3**, which is considered to represent the most relevant state of the art to the subject matter of claim **8**, differs from the subject-matter of said claim in that a creamer is not added to the composition.
 - 4.2 In view of **D5** the solution proposed in claim **8** of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for being an obvious step, as adding a creamer to a coffee is a very old habit and fairly suggested in the available prior art.
 - 4.3 Therefore the features disclosed in **D3** and **D5** would be combined by the skilled person, without exercise of any inventive skills in order to solve the problem posed. The proposed solution in independent claim **8** thus cannot be considered inventive (Article 33(3) PCT).
- 5 **DEPENDENT CLAIMS 2-5, 8-10**
Dependent claims 2-5, 8-10 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).